

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Criminal No. 18-18(2) (DWF/LIB)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Amos Kiprop Koech (2),

Defendant.

This matter is before the Court upon Defendant Amos Kiprop Koech's ("Defendant") objections (Doc. No. 113) to Magistrate Judge Leo I. Brisbois's August 6, 2018 Report and Recommendation (Doc. No. 105) insofar as it recommends that Defendant's Motion to Dismiss based on Due Process and Vagueness be denied. The Government filed a response to Defendant's objections on September 4, 2018. (Doc. No. 122.)

The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Defendant's objections. In the Report and Recommendation, Magistrate Judge Brisbois concluded that the statutory language "reasonable opportunity to observe" in 18 U.S.C. § 1591(c) does not violate the due process clause and is "not [an] esoteric or complicated term[] devoid of common understanding," and is therefore not constitutionally vague. (Doc. No. 105 at 7 (quoting *United States v. Rico*, 619 Fed. App'x 595, 599 (9th Cir. 2015))). The Magistrate Judge further concluded that the Eighth Circuit has held that

18 U.S.C. § 1591 is not limited to suppliers and instead also applies to customers. (*Id.* at 8 (citing *United States v. Jungers*, 702 F.3d 1066, 1075 (8th Cir. 2013)).)

Defendant objects to the Magistrate Judge’s recommendations, arguing that the statutory language “reasonable opportunity to observe” both (1) violates due process because it is a form of strict liability, and (2) is an “unascertainable standard” that is void for vagueness. (Doc. No. 113.) Defendant further objects to the Magistrate Judge’s recommendation that 18 U.S.C. § 1591(c) applies to customers such as Defendant. (*Id.* at 5-6.)

The Court disagrees and adopts in full the Magistrate Judge’s recommendations. The Court concludes, as did the Magistrate Judge, that the language “reasonable opportunity to observe” in 18 U.S.C. § 1591(c) indicates congressional intent to dispense with mens rea. *See United States v. Grimes*, 888 F.3d 1012, 1016 (8th Cir. 2018) (“[T]he federal offense of ‘sexual abuse of a minor’ expressly rejects any ‘state of mind proof requirement’ concerning age.”). The Court further concludes that 18 U.S.C. § 1591 is not unconstitutionally vague because “reasonable opportunity to observe” would “provide a person of ordinary intelligence fair notice of what is prohibited,” is subject to common understanding, and is typical of standards that juries are asked to consider. *See United States v. Paul*, 885 F.3d 1099, 1105 (8th Cir. 2018); *Rico*, 619 Fed. App’x at 599 (concluding that the use of the phrase does not render Section 1591 unconstitutionally vague); *United States v. Davis*, 2016 WL 10679065, at *7 (W.D. Tenn. Dec. 5, 2016) (“Whether [the defendant’s] opportunity to observe [the alleged victim] was ‘reasonable’ [is] not a vague standard.”). Finally, the Court concludes, as did the Magistrate Judge,

that the Court is bound by Eighth Circuit precedent that the sex-trafficking statute applies to customers such as Defendant. *See Jungers*, 702 F.3d at 1075 (holding that 18 U.S.C. § 1591 is not limited to suppliers).

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). After carefully considering Defendant's objections, the Court finds no reason that would warrant a departure from the Magistrate Judge's recommendation. Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Defendant Amos Kiprop Koech's objections (Doc. No. [113]) to Magistrate Judge Leo I. Brisbois's August 6, 2018 Report and Recommendation are **OVERRULED**.
2. Magistrate Judge Leo I. Brisbois's August 6, 2018 Report and Recommendation (Doc. No. [105]) is **ADOPTED**.
3. Defendant Amos Kiprop Koech's Motion to Dismiss based on Due Process and Vagueness (Doc. No. [90]) is **DENIED**.

Dated: October 9, 2018

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge